California Energy Commission
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BEFORE THE CALIFORNIA
ENERGY COMMISSION

RENEWABLES PORTFOLIO STANDARD Docket No. 11-RPS-01

COMMENTS OF THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION ON THE 33% RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES

I. INTRODUCTION

The City and County of San Francisco (CCSF or City) submits these comments on the second version of the Draft Regulations that was posted on July 20, 2012. The City, through its Public Utilities Commission (SFPUC), owns and operates a publicly-owned electric utility (POU), providing approximately 1 million megawatt-hours (MWh) of electricity annually for the City's municipal requirements and other uses.

The City appreciates the time and effort that Commission staff has spent in developing the Draft Regulations, as well as staff's willingness to meet with CCSF and address many of the City's concerns. The City largely supports the Draft Regulations as they relate to CCSF. We address below areas where we urge modifications to better comport with the statute's language and purpose.

II. CCSF SUPPORTS THE CHANGES MADE TO THE DRAFT REGULATION IN RESPONSE TO CCSF COMMENTS

A. Changes Made in Response to CCSF Comments

CCSF appreciates and supports the changes made by the Commission in response to our March 30th comments on the Commission's first version of its draft regulations. These changes address CCSF's alternative compliance obligation under Section 399.30(k) and include:

- Recognizing that the Portfolio Content Category rules do not apply to CCSF as long as it meets the requirements of Section 399.30(k);

- Defining our "electricity demands" as being the same as our "retail sales"; and
- Developing the "soft target" RPS-goals that serve as the upper limit on CCSF's RPS obligations if it has retail sales "unmet by its qualifying hydroelectric generation."

B. Conforming the definition of qualifying hydroelectric generation to statute

CCSF also appreciates the Commission's changes to the definition of "qualifying hydroelectric generation" in Section 3204(A)(7) of the Draft Regulations but notes an important ambiguity in the revised definition that should be clarified.

Hydroelectric facilities may become RPS-certified under either Section 25741 of the Public Resources Code or Section 399.12 of the Public Utilities Code. Only those hydroelectric facilities that are RPS-certified under Public Resources Code 25741 are to be excluded under Section 399.30(k) for purposes of calculating CCSF's qualifying hydroelectric generation. However, the Draft Regulations could be read to also exclude hydroelectric facilities certified under section 399.12 of the Public Utilities Code. To avoid this ambiguity, Section 3204(A)(7)(A)(3) should be revised as follows: "The facility is a hydroelectric facility, but is not an RPS-certified ~~does not meet the definition of a~~ "Renewable Electrical Generation Facility ~~and is not RPS-certified~~."

III. CCSF RECOMMENDS USE OF A SEVEN-YEAR ROLLING AVERAGE TO DETERMINE CCSF'S ELIGIBILITY FOR THE ALTERNATIVE COMPLIANCE OBLIGATION OF SECTION 399.30(K)

The Draft Regulations contain an important new approach, presented for the first time, regarding the CCSF alternative compliance obligation under Section 399.30(k). Under this approach, eligibility for the alternative compliance mechanism would be determined at the start of each compliance period and the determination would remain in effect for that entire period. To be eligible for the alternative compliance obligation pursuant to Section 399.30(k) during a compliance period, at the start of the relevant compliance period, CCSF's hydroelectric generation would have to have exceeded 67% of retail sales for the five years preceding the start of the compliance period. The purpose of this proposal is to ensure that both Commission staff and CCSF know at the start of the compliance period, CCSF's RPS compliance framework for the upcoming period, and to dampen the impact of a short-term decline in CCSF's hydroelectric generation (e.g. due to drought).

While CCSF supports the averaging approach, it should be modified to be consistent with 399.30(k). First, the compliance period should be returned to one year. As proposed by the CEC, a single compliance period could be as long as four years. For example, if CCSF were to fall below the five-year 67% average just prior to the start of the 2017-2020 compliance period, then CCSF would be precluded from utilizing its Section 399.30(k) alternative compliance obligation for this entire four year period, even if it turns out that in every one of these years CCSF exceeded its 67% requirement.

Such a result is inconsistent with Section 399.30(k) which requires that CCSF "shall procure renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year" if it meets the 67% requirement. In crafting SBX1-2 the Legislature established a multi-year compliance period for other POUs[1] but only specified a yearly compliance obligation for CCSF. In fact, the Section 399.30(k) approach was designed to avoid CCSF having to sell rather than itself use greenhouse gas free hydroelectric generation, because it had to buy renewable resources that exceeded its unmet demand. The approach set forth in the Draft Regulations, in contrast, could result in CCSF being required to buy renewables in excess of its unmet demand for an entire compliance period if in the five years prior to the commencement of a compliance period it had less than average hydroelectric generation available. This could be true even in years of greater than average hydroelectric generation.

CCSF does not object to using a rolling average approach to determine each year whether CCSF can use the alternative compliance mechanism in 399.30(k) provided that it retains the yearly assessment and compliance requirement. Under the City's recommended approach, CCSF's compliance obligation would be set at the beginning of each year (not compliance period) based on its hydroelectric generation over the previous five or (as proposed here by CCSF) seven years. This approach allows CCSF and the CEC to determine at the beginning of each year whether in that year CCSF can use the alternative compliance approach described in Section 399.30(k) without creating a risk that CCSF will be required to buy renewable resources in excess of its unmet demand for an extended, multi-year period.

If the Commission decides to adopt the averaging approach, CCSF recommends an important change. As discussed with Commission staff, calculating CCSF's hydroelectric generation on a seven-year, rather than a five year basis, would better correspond to the cyclical nature of California's

[1] Public Utilities Code Section 399.30(a)

hydroelectric generation. It is also consistent with the seven-year average used to determine RPS obligations for the Power and Water Resources pooling Authority (PWRPA) pursuant to Section 399.30(j). Further, CCSF requests that filings to determine the applicable compliance mechanism be made 90 days after the start of each calendar year to allow the City to collect and compile the information.

IV. PROCUREMENT PLAN AND COMPLIANCE REPORTING REQUIREMENTS

A. The Procurement Plan Requirements should be clarified to allow CCSF to develop multi-year procurement plans.

The Procurement Plan requirements applicable to the CCSF are comparable to, and largely parallel, the requirements established for all other POUs. In response to comments from CMUA, these requirements have been modified to better conform to the statutory requirements of SBX1-2. Consistent with these statutory requirements, CCSF is proposing minor changes to the procurement plan requirements to clarify that, similar to all other POUs, it may develop a multi-year procurement plan. This will allow CCSF to better manage the variability of its hydroelectric generation and synchronize the Public Utilities Commission's (PUC's) multi-year budgeting process with its RPS obligations.[2]

B. The Compliance Reporting Requirements should be further clarified.

The reporting requirements established for CCSF are also comparable to those established for other POUs while also taking into account CCSF's yearly compliance obligation under Section 399.30(k).

CCSF supports Commission staff's statements, both at the July 30th Workshop and in the Draft Regulations, to coordinate any RPS-related reporting requirements with other reports (such as the Power Source Disclosure and CEC S-1 and S-2 forms) that POUs are already required to submit to the Commission.

To facilitate this process, CCSF again recommends that the Commission include in its Draft Regulations a definition of retail sales. We recommend using a definition based

[2] The SFPUC's Enforcement Program, adopted on December 13, 2011 (Section 5 – Timing of Submission and Adoption of Procurement Plans, p. 2), proposes that the timing of the PUC's Procurement Plan be developed with sufficient time so the Plan's fiscal effects can be included into the PUC's budget process which currently is on a two-year cycle.

on the Commission's current definition of "electricity product" which is used to determine the amount of retail sales a retail seller must report for the Commission's Power Source Disclosure/Power Content Label (PSD/PCL) reporting requirements[3]. Use of similar definitions for both the PSD and RPS programs should simplify POU reporting obligations and ensure consistent reporting.

V. CONCLUSION

CCSF appreciates the opportunity to comment on the Draft Regulations.Attached to this filing are recommended changes to the Draft Regulation to address the above concerns as well as other minor clean-up language.

Respectfully submitted,
/S/
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[3] California Code of Regulations, Title 20, Article 5 (Electricity Generation Source Disclosure), Section 1391(b) and (r).

ATTACHMENT

SUGGESTED CHANGES TO DRAFT REGULATIONS

Section 3204 (a)(7)(A) – Definition of Qualifying Hydroelectric Generation (Page 15)

(7) Notwithstanding Section 3204 (a)(1) – (4) or Section 3204 (c)(1)-(9), a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall be deemed to be in compliance with this Section 3204 if either 1) all of the POU's retail sales in any given calendar year is satisfied with its qualifying hydroelectric generation or 2) the POU meets the requirements of Section 3204(7)(C). [HJ1]

(A) For purposes of this Section 3204, "qualifying hydroelectric generation" is generation from one or more facilities that meets the following criteria:

1. The facility is located within the state.

2. The facility is owned and operated by the POU.

3. The facility is a hydroelectric facility, but is not an RPS-certified [HJ2] ~~does not meet the definition of a~~ "Renewable Electrical Generation Facility" ~~and is not RPS-certified~~.

~~4. The facility, in conjunction with other facilities meeting the requirements of this Section 3204 (a)(7), provides greater than an average of 67 percent of the POU's retail sales for the five years preceding the beginning of each compliance period.~~ [HJ3]

Section 3204 (a)(7)(B) – Eligibility for Section 399.30(K) (Page 15-16)

(B) A POU shall demonstrate that it meets the criteria listed in Section 399.30 (k) by providing the Commission documentation showing the POU received ~~from hydroelectric sources that the POU owns and operates~~ at least an average of 67 percent of its retail sales in the seven[HJ4] ~~five~~ years preceding the start of each calendar year ~~compliance~~ period from hydroelectric sources that the POU owns and operates . The POU shall initially submit documentation for the seven ~~five~~ years preceding January 1, 2011 and January 1, 2012~~,~~ within 60 calendar days of the adoption of these regulations. New documentation for each subsequent calendar year shall[HJ5] ~~must~~ be submitted within ~~in~~ 90 calendar days after the start ~~end~~ of each year. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (k)[HJ6]

Section 3204 (a)(7)(C) – Satisfying Needs Unmet by Qualifying Hydroelectric Generation

C) If a POU meeting the criteria listed in Public Utilities Code Section 399.30 (k) has retail sales unsatisfied by its qualifying hydroelectric generation in any given year, the POU shall procure electricity products equal to the lesser of the following:

1. The specified percentage [HJ7]~~portion~~ of the POU's retail sales unsatisfied by the POU's qualifying hydroelectric generation.
2. The soft target as defined in Section 3201(bb) [HJ8]~~listed in Section 3204 (a)(1)—(4)~~ corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its ~~annual~~ retail sales.

Section 3205 – Procurement Plans and Enforcement Programs

(2) By January 1, 2013 [HJ9]a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS targets ~~annually~~. The renewable energy resources procurement plan shall additionally provide a forecast of the qualifying hydroelectric generation expected to meet the POU's forecasted annual retail sales [HJ10]~~electricity demand~~. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 days of adoption.

Section 3207 – Compliance Reporting for POUs (Page 30-31)

(e) Notwithstanding Section 3207 (a) – (c) a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall annually submit to the Commission, by the deadline for annual reports specified in Section 3207 (b), documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state; that the POU ~~receives greater than 67 percent of its electricity sources to~~ meets ~~its~~ ~~retail sales as calculated under~~ the requirements of Section 3204(a)(7)(B): ~~electricity demands on an annual basis from qualified hydroelectric facilities as defined in Section 3204 (a)(7)~~[HJ11]. ~~The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (k).~~ [HJ12] ~~A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) must additionally~~ that the POU [HJ13]submit its total retail sales and documentation of its annual qualifying hydroelectric generation, and that the POU met its RPS requirements under either Section 3204(a)(7) or Section 3204(a)(7)(C). ~~provide evidence that any electricity demands unsatisfied by its qualifying hydroelectric generation in any given year are met with the procurement from eligible renewable energy resources, including renewable energy credits.~~ [HJ14]

Section 3201 – Definitions

( ) **"Retail Sales"** means electrical energy produced by a generating facility that a retail seller offers to sell to consumers in California under terms and conditions specific to an offer or tariff. It does not include the provision of electric services on site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utiltiies Code, or sold or transferred to an affiliate, as defined in Section 372, subdivision (a), of the Public Utilities Code. [HJ15]

Entities Considered to Be in Compliance With This Law (Page 4)

Additionally, SB X1-2 states, "A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a 'renewable electrical generation facility' pursuant to Section 25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year, in order to satisfy its renewable energy procurement requirements."[10] This provision applies to the City and County of San Francisco and its hydroelectric generation from the Hetch Hetchy ~~reservoir~~ Water and Power System[HJ16]. If the provision is satisfied, the City and County of San Francisco must meet the RPS procurement targets only for its electricity demand that is not satisfied by hydroelectric generation from the Hetch Hetchy ~~reservoir~~ Water and Power System in any given year.